IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14-12-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.28547 of 2007
and
MP No.1 of 2007

M.P.Marimuthu .. Petitioner

vs

1.The Inspector General of
Registration
Santhome High Road
Sahthome
Chennai 600 004.

2.The Sub Registrar
Kangeyam
Kangeyam Taluk
Erode District.

3.The Assistant Commissioner
HR & CE Department
Kangeyam
Kangeyam Taluk
Erode District

4.The Executive Officer
Arulmighu Prasanna Venkataraman
Swamy Thirukovil
Kangeyam
Kangeyam Taluk
Erode District. .. Respondents

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Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the records of the 2nd respondent culminating in and by his proceedings M.A.No.431/2007 dated 22.8.2007 and quash the same and consequently direct the respondents 1 to 2 to register the sale deed dated 22.8.2007 and release the same after due registration to the petitioner.

For Petitioner : Mr.M.M.Sundaresh

For Respondents : Mr.L.S.M.Hasan Fizal
for RR1 and 2

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Mr.T.Chandrasekaran
Special Government Pleader
for R3

Mr.B.Easwaran for
M/s.Swaraj Associates
for R4

ORDER

Seeking a writ of certiorarified mandamus to quash the proceedings of the second respondent in M.A.No.431/2007 dated 22.8.2007, and consequently direct the respondents 1 to 2 to register the sale deed dated 22.8.2007, and release the same after due registration, to the petitioner, this writ petition has been brought forth.

2.The affidavit in support of the petition is perused. The Court heard all the learned Counsel on either side.

3.The case of the petitioner who seeks the relief, in short is that by the proceedings of the Tahsildar, Kangeyam, dated 27.1.1992, patta has been issued to 27 persons for the lands situated in Old Survey No.144/B corresponding to New Survey No.340/3 and 346/2 situated in Kangeyam Village; that the said lands were purchased by one Karuppasamy and others; that the petitioner has paid the consideration for a portion of the said lands to two of its owners who have executed a sale deed in his favour on 22.8.2007; that the said document was placed for registration on the very day; that the second respondent without registering the document, has returned the same by stating that as per the instructions of the first respondent, registration could be done only after waiting for 45 days and thereby, has given time to H.R. & C.E. Department to produce the court's order in that regard; that the petitioner came to know from the said order that there was an objection which appeared to have been made by the fourth respondent towards the registration; but, no objection was raised at the time of the issuance of patta in favour of the vendor, and thus, as on today, the vendor of the petitioner is not only the owner, but also in actual possession of the property; that with the owners of the property, the petitioner has also entered into sale transaction and paid the entire consideration; that while those documents are placed for registration, the registering authority cannot adjourn the registration calling for production of certain documents from the H.R. & C.E. Department, which raised objection, which is illegal, and under the circumstances, it becomes necessary that the order passed calling for production of the documents by the H.R. & C.E. Department and adjourning it for the purpose of registration after 45 days has got to be quashed and a direction be issued to the second respondent to register the document as one required in law.

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4.The petitioner's Counsel reiterated the averments in the petition.

5.The learned Special Government Pleader for the third respondent H.R. & C.E. Department and also the learned Counsel for the fourth respondent, the Executive Officer of the Temple, have stated that it is a case where ryotwari patta has been granted to the temple; that consequent upon the patta proceedings, patta has been issued to the vendor; that the temple was not even a party in those proceedings; but, now at this stage, ryotwari patta has been granted; that the property is vested with the temple, and under the circumstances, when the objection was raised before the Sub Registry, the H.R. & C.E. Department was not given sufficient time to produce the Court's order in this regard. The learned Counsel would further add that a third party devotee of the temple filed a civil suit stating that no encumbrance should be created on the property; that the suit is also pending; that under the circumstances, the objection raised by the H.R. & C.E. Department, was valid; that finding force in the objection raised, the Department was also directed to produce the documents within the stipulated period, and hence, the writ petition has got to be dismissed.

6.After hearing both sides, this Court is of the considered opinion that it is a fit case where a direction has got to be issued. Admittedly, the document was placed by the petitioner, who has entered into transaction of sale with the vendor of the property in respect of a piece of land. The document is also placed for registration before the second respondent on 22.8.2007. Instead of registering the document, the second respondent seems to have called for documents from the H.R. & C.E. Department which raised objection for registration of the same. The objection of the department was that the property belonged to the temple, and Ryotwari patta has also been issued, and hence, it should not be registered. Now, at this juncture, it is pertinent to point out that when a document is placed for registration and if the conditions for registration are fulfilled, a duty is cast upon the the Sub Registry to register the document. Instead, in the case on hand, the second respondent Sub Registrar has called for the documents from the H.R. & C.E. Department to sustain its objection. This Court is of the considered opinion that it is not a case where the Sub Registry could call for any documents/evidence from other party in order to decide the issue between them in respect of the title or possession over the same, and if it is allowed, then, in any given case where an objection is raised as to the title or possession of the property, the Sub Registry will assume the power of deciding those questions which is outside their competency, power and jurisdiction. Under the circumstances, such practice has got to be deprecated. Hence, it is a fit case where a direction has got to be issued to the second respondent Sub Registrar to register the document, and if there is any dispute as to the question of title, the parties are at liberty

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to raise the same before the Court of civil law and not before the Sub Registrar as one done by the H.R. & C.E. Department in this case.

7.Accordingly, a direction is issued to the second respondent to register the document, if the conditions for the purpose of registration as one warranted in law, are fulfilled. This writ petition is disposed of. No costs. Consequently, connected MP is closed.

Nsv/

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1.The Inspector General of
Registration
Santhome High Road
Sahthome
Chennai 600 004.

2.The Sub Registrar
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Kangeyam Taluk
Erode District.

+ 2 ccs to Government Pleader SR No. 74558 and 74364
+ 2 ccs to M/s. Swaraj Associates, Advocate SR No. 74503
+ 1 cc to Mr. M. M. Sundresh, Advocate SR No. 74234

WP No.28547 of 2007

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